

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND
RECYCLING, LLC,

Plaintiff,

v.

CEMEX PUERTO RICO, et al.,

Defendants.

Civil No. 07-1658 (JAF)

O R D E R

Plaintiff American Waste Management and Recycling, LLC, brings the present action against Defendants CEMEX Puerto Rico, Canopy Ecoterra, and XYZ Insurance Companies, alleging state claims for breach of contract and tortious interference with contract. Docket Document No. 1.

On October 5, 2007, we issued an order directing Plaintiff to remove certain containers and equipment from CEMEX' premises during the period October 10-12, 2007. Docket Document No. 60. On October 19, 2007, claiming that Defendants had not complied with our order of October 5, Plaintiff moved for further relief. Docket Document No. 68. Plaintiff requested an order (1) permitting Plaintiff to remove certain scrap metals from CEMEX' site; (2) directing CEMEX to return motors missing from the site; (3) permitting Plaintiff to set up a web camera monitoring system; and (4) ordering Ecoterra to pay all demurrage charges on the

Civil No. 07-1658 (JAF)

-2-

1 containers remaining at CEMEX' site. Id. On November 7, 2007, we
2 granted Plaintiff's motion for relief, and stated that failure to
3 comply by Ecoterra or CEMEX would result in severe sanctions,
4 including striking of pleadings and entry of default. Docket
5 Document No. 83.

6 On December 4, 2007, Plaintiff filed the present urgent motion,
7 requesting us to enforce compliance with our order of October 5,
8 2007. Docket Document No. 96. Plaintiff requested us to rule by
9 December 7, 2007, because on December 10, 2007, the last of the
10 vessels required to transport Plaintiff's scrap materials is
11 scheduled to sail from Puerto Rico. Id. Plaintiff claims that it
12 has suffered substantial losses due to the continued delay. Id.

13 On December 6, 2007, CEMEX requested that we permit them the
14 full ten-day period permitted by Local Rule 7(b) to respond to
15 Plaintiff's motion. Docket Document No. 100. CEMEX also made
16 several preliminary arguments on the merits of Plaintiff's motion.
17 Id. CEMEX argued that (1) our order of November 7, 2007, did not
18 have any deadline attached, so we cannot now grant an urgent motion;
19 (2) Plaintiff has not provided evidence to substantiate the claimed
20 urgency; and (3) Plaintiff must obtain certain legally-required
21 permits before it can remove waste from CEMEX' premises.

22 CEMEX' first two arguments can be easily disposed of. It was
23 clear from our orders of October 5 and November 7, 2007, that
24 Defendants were to comply immediately. See Docket Document Nos. 60,

Civil No. 07-1658 (JAF)

-3-

1 83. The continued lack of cooperation from both Defendants is
2 unacceptable, and may result in future sanctions.

3 Turning to CEMEX' third argument, CEMEX has indicated that it
4 believes Plaintiff must obtain certain permits from the Puerto Rico
5 Environmental Quality Board before removing materials from the site.
6 Docket Document Nos. 91, 100. Specifically, CEMEX claims that
7 Plaintiff must obtain a permit for the transportation of non-
8 hazardous waste, and a permit for conducting activities that generate
9 non-hazardous waste. Docket Document 91 (citing "Reglamento para el
10 Manejo de los Desperdicios Sólidos No Peligrosos" Rules 643-44).
11 However, Plaintiff indicates that it has obtained the permit for
12 transporting non-hazardous waste, and notes that because it is not
13 generating non-hazardous waste, the second permit is not required.
14 Docket Document No. 96. This argument is supported by a letter from
15 the executive director of the Environmental Quality Board indicating
16 that in order to move the materials, Plaintiff need only have a
17 permit for the transportation of waste, and not a permit for the
18 generation of waste. Docket Document No. 99-2. We, therefore, agree
19 with Plaintiff that CEMEX has not demonstrated that the second permit
20 is necessary.

21 In accordance with the foregoing, we **GRANT IN PART** Plaintiff's
22 emergency motion, Docket Document No. 96. We order CEMEX to
23 immediately: (1) permit AWMR to remove the containers currently at
24 the CEMEX premises; (2) return to AWMR the motors mentioned and shown

Civil No. 07-1658 (JAF)

-4-

1 in exhibits B and C at Docket Document No. 68; and (3) permit AWMR to
2 set up the web camera monitoring system described in Docket Document
3 No. 48. As ordered in Docket Document No. 83, Ecoterra must pay
4 demurrage charges on containers at the CEMEX site from October 13 to
5 November 13, 2007. We **DENY IN PART** Plaintiff's motion insofar as
6 Plaintiff requests us to order CEMEX to pay demurrage charges or
7 sanctions. Such costs will be considered as extraordinary costs to
8 the prevailing party.

9 **IT IS SO ORDERED.**

10 San Juan, Puerto Rico, this 7th day of December, 2007.

11 s/José Antonio Fusté
12 JOSE ANTONIO FUSTE
13 Chief U. S. District Judge